

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 427 OF 2002

1. Dipak Ramchandra Chawariya)
aged 25 years, Occ: Nil,)
r/o. Narayan Kalbhor Chawl,)
No.21, Room No.4, Kalbhor)
Nagar, Chinchwad, Dist. Pune)(Original Accused
) No.1)
)
2. Jitendra Tanaji Mane,)
aged 23 years, Occ: Education)
R/o. Waman Kalbhor Chawl,)
No.4, Kalbhor Nagar,)
Chinchwad, Pune.) (Original accused
) No.3)
3. Anil Ramchandra Chawariya,)
aged 23 years, Occ: Business,)
R/o. Narayan Kalbhor Chawl,)
No.21, Room No.4, Kalbhor)
Nagar, Chinchwad, Pune.) (Original accused
) (No.4)
)
4. Shridhar @ Pinttya Balaji)
Kinjalkar, aged 24 years,)
Occ: Nil, R/o. Sahebrao)
Kalbhor Chawl No.1, Room No.5,)
Kalbhor Nagar, Chinchwad,)
Pune.) (Original accused
) No.5)
)
5. Dyaniyal Anthoni Pias,) (Original accused
) No.6)
)
aged 29 years, Occ: Driver,)
R/o. Narayan Kalbhor Chawl)
No.6. Room No.12, Kalbhor Nagar,))
Chinchwad, Pune.)
At present, all the appellants)
are detained in Yerawada Central)
Prison, Pune.).. Appellants.

V/s

The State of Maharashtra).. Respondents.

Mr. Vilas Tapkir, advocate for the appellant Nos. 1,
to 4 i.e. original accused Nos. 1,3, 4 and 5.

Mr. Ramesh Karale, advocate appeared as amicus curiae

for appellant No. 5 i.e. original accused No.6.

Mr. A.M. Shringarpure, APP for the respondent - State.

CORAM: V.M. KANADE, J.

DATE : 7th September, 2004

ORAL JUDGMENT:

1. The learned Counsel appearing on behalf of the appellants submits that the accused have already taken away brief from him. Accordingly, order was passed on 6/10/2003 directing the Office to issue fresh notices to the accused to enquire whether they would like to be defended by their private lawyer or at the costs of the Government through legal aid scheme. Notices have been served on the appellants.

2. Out of the six accused, present appeal has been preferred by the original accused Nos. 1,3,4,5, and 6 who were charged under section 395 I.P.C. read with section 397 I.P.C., Section 504 I.P.C. read with section 34 I.P.C., Section 506 (1) I.P.C. read with section 34 I.P.C. and also under section 4 I.P.C. read with section 25 of the Arms Act.

3. The Trial Court convicted accused Nos. 1 to 6 under section 147 read with section 149 of I.P.C. and they were sentenced to under go R.I. for six months and to pay fine of Rs 500 each and in default to

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suffer R.I. for two months. The Trial Court also convicted accused Nos. 1 to 6 under section 148 read with section 149 of I.P.C and they were sentenced to under go R.I. for six months and to pay fine of Rs 500 each and in default to suffer R.I. for three months. The Trial Court further convicted accused Nos. 1 to 6 under section 324 read with section 149 of the I.P.C and they were also sentenced to undergo R.I. for two years and to pay fine of Rs 1000/- each and in default to suffer R.I. for six months. Accused No.2, however, was also convicted under section 307 of the I.P.C. and was sentenced to suffer R.I. for 7 years and to pay fine of Rs 2000 and in default to suffer R.I. for six months. However, he has filed separate appeal which is pending in which he has been released on bail. So far as accused Nos. 1,3,4 and 5 are concerned, they have already completed their sentence. Original accused No.6 was arrested on 15/12/2000. He was in jail during the pendency of the trial. He was, however, released on bail on 2/5/2002 by this Court. He has, therefore, undergone one year and five months of sentence.

4. Appellants have already taken away papers from advocate Tapkir and, thereafter, fresh notices were served. However, they have not engaged any private

advocate. Shri Ramesh Karale, advocate is appointed as an amicus curiae to appear on behalf of the accused No.6. He has taken me through the judgment and order passed by the Trial Court as also the original evidence which is adduced by the prosecution.

5. Accused Nos. 1 to 6 were charged of jointly having committed dacoity on 8/12/2000 at about 10.30 p.m. in the courtyard of the complainant Raju Anant Durge and had stolen Rs 6500/- in cash and a gold chain from the complainant and while committing dacoity, they were armed with deadly weapons and attempted to cause grievous hurts. The accused alternatively were charged with having found in unlawful assembly for prosecution of the common object.

6. Prosecution's case is that the complainant was a Chairman of Omcar Swarup Co-operative Credit Society and was residing at Narayan Kalbhor Chawl along with his wife and two daughters. The accused were also residents of the same locality. On 8/12/2000, when the complainant returned home, accused No.2 asked him to come out side the house and abused him in filthy language. After he was forced to come in the courtyard, the complainant was assaulted on his left

palm by accused Dipak Chawariya with knife and the accused Shridhar assaulted the complainant by the blunt side of sword on his neck and the accused Dyaniyal assaulted him with wooden rod so also the accused Sangram Mote assaulted him by wooden rod and also fist blows and kicks and they committed dacoity and took away Rs 6,500/- in cash and a golden chain worth Rs 8000/-. Prosecution's case is that the complainant was rescued by his wife - Prabha and his brother - Sunil. He was removed to Lokmanya Hospital. A complaint was lodged. Investigation was completed. Prosecution has examined in all 10 witnesses. P.W.1, 2 and 5 have corroborated the statement of the complainant. Trial Court has given cogent reasons while coming to the conclusion that the prosecution has succeeded in proving the charge under sections 147, 148, 324 read with section 149 so far as the appellants are concerned.

7. The learned Counsel appeared on behalf of the accused vehemently submitted that the prosecution has examined interested witnesses and in the absence of any independent witness, the evidence of interested witnesses cannot be relied upon. He submitted that the prosecution has examined the complainant as P.W.1, his wife as P.W.2 and cousin as P.W.5 and, therefore,

their evidence should be discarded. It is not possible to accept the said submission. The complainant was injured in the said attack and his wife had tried to rescue him from the assailants. P.W. 5 is the cousin of the complainant. Apex Court has held that merely because the witnesses are interested that alone cannot be the ground for discarding their testimony. The complainant was injured in the said attack. His evidence is corroborated by his wife and by cousin. The said submission, therefore, cannot be accepted. The learned counsel appearing on behalf of the appellants further submitted that the alleged incident had taken place in Chawl and the said incident must have been witnessed by number of persons. He submitted that the prosecution could have adduced evidence of independent witnesses. In my view, merely because the other witnesses are not examined, the prosecution's case does not become weak. The learned Counsel, thereafter, submitted that there were number of discrepancies in the statements of witnesses and, therefore, the Trial court ought to have given benefit of doubt in favour of the appellants. This submission also cannot be accepted inasmuch as merely because certain discrepancies have crept in the statement of witnesses, as long as it is not shown that those

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discrepancies are such as to completely destroy the case of the prosecution, such evidence cannot be discarded on account of minor discrepancies.

8. In my view, Trial Court has given cogent reasons and has convicted the appellants to undergo sentence of two years. Appellants i.e. original accused Nos. 1,2, 3, and 4 i.e. original accused Nos. 1, 3, 4 and 5 were arrested on 14/12/2000 and they have already completed their sentence. Appellants 1,2,3 and 4 therefore, be released forthwith though their appeal is rejected as they have already undergone the said sentence. So far as accused No.6 is concerned, he was in jail from 15/12/2001 to 14/5/2002. He was arrested on 15/12/2002. He was directed to be released on bail by order dated 2/5/2002 and he was actually released on 14/5/2002. He has, therefore, remained in jail for a period of almost one year and five months. His sentence is reduced to one which he has already undergone and, therefore, appellant No.5 i.e. original accused No.6 also be released forthwith and his appeal is partly allowed.

9. In the result the following order is passed:-

O R D E R

. So far as appellant No.5 - original accused No.6 is concerned his conviction is modified to the sentence which he has already undergone. Appellant No.5 - original accused No.6 be released forthwith, unless he is wanted in any other case. Accordingly appeal of appellant No.5 - original accused No.6 is partly allowed.

. Remaining appellants 1, 2, 3, 4 i.e. original accused Nos. 1, 3, 4 and 5 have already completed their sentence and since they have already undergone the sentence imposed upon them by the Trial Court, they be released forthwith though their appeal is rejected and if not already released unless they are wanted in any other case.

V.M. KANADE, J.